UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,253	07/15/2003	Darko Kirovski	MS1-356USC1	9756

22801 7590 04/05/2006

LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER	
SELLERS, DANIEL R	

ART UNIT	PAPER NUMBER
2615	

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/620,253	KIROVSKI ET AL.	
	Examiner	Art Unit	
	Daniel R. Sellers	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,22,23,26,33,34,37-39,42 and 44-49* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,22,23,26,33,34,37-39,42 and 44-49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 8, filed March 23, 2006, with respect to the priority date of Cookson have been fully considered and are persuasive. The rejection of claims 1, 4, 22, 23, 26, 33, 34, 37-39, 42, and 44-49 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kurowski and the provisional application by Cookson, see the following rejections under 35 USC 103.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 4, 22, 23, 26, 33, 34, 37, 42, and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kurowski, U.S. Pat. No. 6,553,127, and Cookson, U.S. Provisional Application 60/116,641 (hereinafter Kurowski and Cookson).

4. Regarding claim 1, Cookson teaches a copy protection system, which can detect a weak and a strong watermark in an audio file (p. 1, para. 1-3 and p. 3, para. 1). However, Cookson does not teach a watermark insertion unit with these features. Kurowski teaches a watermark insertion unit to selectively insert the strong watermark and/or the weak watermark into at least a segment of the audio signal, so that at least some resulting segments have either the strong or the weak watermark inserted therein,

but not both (Col. 5, lines 30-40, Col. 11, lines 29-43, Col. 11, line 65 – Col. 12, line 28 and Fig. 1-2). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Cookson and Kurowski for the purpose of identifying whether the copy is an authorized one and the author of the audio content (Kurowski, Col. 1, lines 30-35).

5. Regarding claim 4, the further limitation of claim 1, Kurowski teaches a system that is an operating system (Fig. 1).

6. Regarding claim 22, see the preceding arguments with respect to claim 1. The combination of Kurowski and Cookson teaches the watermark encoding system with these features. Kurowski also teaches the watermark detection system configured to detect a presence of a watermark in the segments of the audio (Col. 11, lines 44-64), wherein the system knows whether the watermark is a strong watermark or a weak watermark (Col. 12, lines 16-25).

7. Regarding claim 23, see the preceding arguments with respect to claim 22. The combination teaches a separate watermark detector, which is used on a client side, and a watermark encoder, which is used by the audio content publisher (Col. 1, lines 15-30 and Col. 2, lines 40-43).

8. Regarding claim 26, see the preceding argument with respect to claim 1. The combination of Kurowski and Cookson teaches watermarking a first portion with a strong watermark and a second, separate, portion with a weak watermark (Col. 1, line 48 – Col. 2, line 7).

9. Regarding claim 33, see the preceding argument with respect to claim 22. The combination teaches these features of encoding and detecting watermarks.

10. Regarding claim 34, see the preceding argument with respect to claim 26. The combination teaches a system with these features, wherein Kurowski teaches a computer readable medium (Col. 2, lines 20-22).

11. Regarding claim 37, see the preceding argument with respect to claims 1 and 26. The combination teaches the pattern generator and the watermark insertion unit with these features.

12. Regarding claim 42, see the preceding argument with respect to claim 4. The combination teaches these features on an operating system.

13. Regarding claim 44, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches that the watermarks can be placed in one of a spatial or frequency domain (Col. 12, lines 38-41), wherein the segments must be distinct from each other for the features taught by Kurowski to work (Col. 12, lines 1-10).

14. Regarding claim 45, the further limitation of claim 22, see the preceding argument with respect to claim 44. The combination teaches that the watermarks are distinct.

15. Regarding claim 46, the further limitation of claim 26, see the preceding argument with respect to claim 44. The combination teaches that the watermarks are separate in the frequency domain.

16. Regarding claim 47, the further limitation of claim 33, see the preceding argument with respect to claim 44. The combination teaches that the watermarks are separate in the frequency domain.

17. Regarding claim 48, the further limitation of claim 34, see the preceding argument with respect to claim 44. The combination teaches that the watermarks are separate in the frequency domain.

18. Regarding claim 49, the further limitation of claim 37, see the preceding argument with respect to claim 44. The combination teaches that the watermarks are separate in the frequency domain.

19. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kurowski and Cookson as applied to claim 37 above, and further in view of Bloom.

20. Regarding claim 38, the further limitation of claim 37, see Bloom

... wherein the watermark insertion unit selectively chooses segments for insertion of the watermarks according to an audible measure of the segments. (Col. 3, lines 14-21, Col. 5, lines 53-61, and Col. 6, line 66 – Col. 7, line 8).

The previous combination of Kurowski and Cookson teaches the features of the parent claim, but they do not teach an audible measure. Bloom teaches a method for watermark insertion. Bloom teaches the insertion of two different watermarks, which are disjoint from each other in one of a spatial, temporal, or transform domain (e.g. a frequency domain via a Fourier Transform). Bloom teaches that an audible measure is used (Col. 6, lines 40-42). It would have been obvious for one of ordinary skill in the art

at the time of the invention to combine the teachings of Kurowski, Cookson, and Bloom for the purpose of selecting appropriate audio blocks for watermark insertion.

21. Regarding claim 39, the further limitation of claim 37, see the preceding argument with respect to claim 37. The combination of Kurowski, Cookson, and Bloom teaches these features of selectively choosing segments for insertion of the strong watermark (Kurowski, Col. 11, lines 32-37 and Col. 12, lines 1-5 and lines 16-21). Bloom teaches the audible criteria (Col. 6, lines 40-42).

Double Patenting

22. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

23. Claim 38 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 and claim 4 of prior U.S. Patent No. 6,952,774. This is a double patenting rejection.

24. Claim 38 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 10/970,499. This is a

provisional double patenting rejection since the conflicting claims have not in fact been patented.

25. Claim 38 of this application conflict with claim 1 of Application No. 10/970,499. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bhaskaran et al., U.S. Pat. No. 6,064,764 (see Col. 1).

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

28. The applicant is reminded that Technology Center 2600 has undergone restructuring as of March 19, 2006. Any **further communication** regarding this application should **indicate the new Art Unit 2615** (old art unit 2644).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-7528. The examiner can normally be reached on Monday to Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SINH TRAN
SUPERVISORY PATENT EXAMINER

DRS